19 41. **File No.** B. Civil Cts. 47

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Legal DEPARTMENT

B BRANCH

Subject:— L. A. Bill No. XXX of 1947.

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A Bill to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof.

Bom. Act No. XLVIII of 1947.

P.15/E

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A Bill to repeal the Bombay Civil Courts (Amendment) Acts of 1942 and 1943 and to re-enact certain provisions thereof.

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2.	G.L., L.D. No.10969, dt. 3-11-47.	Seeking Governor's assent.	3-6.
3.	L.D., H.I. No.16120, dt.22-12-47.	Governor-General's assent.	7-9.
4.	L.D.H.I. No.1436, dt. 1-12-47.	Repugnancy Repugnancy of the Bill.	9-10.
5.	G.I., L.D., No.4186, dt.24-4-47.	Publication of the Bill.	11-16.
6.	G.R., L.D., No.13171, dt. 20-12-47.	Publication of the Act.	17-22.
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R.
D/57.

Office of the R.L.A.

The requisite draft Bill is sent herewith.

2. The subject-matter of the Bill falls under entry 1 in the Provincial Legislative List and entry 4 in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935.

3. As section 3 of Bombay Act XI of 1942 which is being re-enacted (vide clause 5 of the Bill), contains provisions repugnant to the provisions of section 6 of the Bombay Civil Courts Act, 1869, which is an existing Indian Law relating to entry No.4 in the Concurrent Legislative List, the Bill will have to be reserved for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

4. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935, or falls within the purview of clause (a),(b),(c) or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

5. The Home Department proposed to reproduce the statements attached to each of the three Acts which are being re-enacted as the Statement of Objects and Reasons of the proposed Bill. That would not be appropriate. A revised draft Statement of Objects and Reasons is appended.

Sd. D.V.Pyne

Remembrancer of Legal Affairs.

U.R.to H.D.,No.2051, dated the 1st March 1947.

MRP.
15/6/56.

No.10969.

Legal Department,

Bombay Castle, 18th November 1947.

From

P.M.Lad, Esquire, I.C.S.,
Secretary to the Government of Bombay;

To

The Private Secretary to the Governor of Bombay.

Subject:- A Bill to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for being presented to His Excellency the Governor, an authentic copy of a Bill to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 10th September 1947 and on the 17th October 1947, respectively.

2. The subject-matter of the Bill falls under entry 1 in List II and entry 4 in List III in the Seventh Schedule to the Government of India Act, 1935.

3. As section 2 of the Bombay Act XI of 1942 which is being re-enacted (vide clause 3 of the Bill) contains provisions repugnant to the provisions of section 6 of the Bombay Civil Courts Act, 1869, which is an existing law relating to entry 4 in the Concurrent Legislative List, the Bill will have to be reserved for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935.

P.T.O.

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.
2. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.
3. Bill as read for the third time and passed by the Bombay Legislative Council.
4. Extracts from the proceedings of the Bombay Legislative Assembly dated the 10th September 1947 and of the Bombay Legislative Council dated the 17th October 1947..

4. I am also to forward herewith six copies of each of the items Nos.1 to 3 and two copies of item No.4 of the papers noted in the margin. The Bill was not referred to a Select Committee.

I have the honour to be,

Sir,

Your most obedient servant,

Sd. P.H.Lad,
Secretary to the Government of Bombay,
Legal Department.

Through

The Secretary to the Government of Bombay,
[illegible] Department.

MRP.
15/6/56.

No.PSG.5852.

From

The Private Secretary to the Governor of Bombay.

To

The Secretary to Government,
Legal Department.

Government House,

Bombay, 20th December 1947.

Sir,

With reference to the correspondence resting with this office letter No. PSG.5820, dated the 17th December 1947, I am directed to forward herewith the authentic copy of the Bombay Civil Courts (Amendment) Bill, 1947, with His Excellency the Governor-General's assent signified thereon.

Yours most obedient servant,

Sd.

for Private Secretary to the Governor of Bombay.

MRP.
15/5/50.

No.P.S.G.
Office of the Private Secretary to the Governor,
Government House,
Bombay, 27th November 1947.

From

L.E.Bagshawe, Esquire, I.C.S.,
Private Secretary to the Governor of Bombay.

To

The Secretary to the Bombay Legislature Department,
Council Hall, BOMBAY.

Subject:- The Bombay Civil Courts (Amendment) Bill, 1947.

Sir,

With reference to the above-mentioned Bill, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council on the 10th September and 17th October 1947, respectively, I am directed to state, for the information of the Honourable the Speaker and the Honourable the President, that as section 2 of the Bombay Civil Courts (Amendment) Act, 1942, which is being re-enacted (vide clause 3 of the Bill) contains provisions repugnant to the provisions of section 6 of the Bombay Civil Courts Act, 1869, which is an existing law relating to entry 4 in the Concurrent Legislative List, it is necessary to reserve the Bill for the consideration of His Excellency the Governor-General with reference to section 107(2) of the Government of India Act, 1935. His Excellency the Governor is accordingly pleased, under section 75 of the Government of India Act, 1935, to declare that he reserves the Bill for the consideration of His Excellency the Governor-General.

Your obedient servant,

Sd. L.E.Bagshawe,

Private Secretary to the Governor of Bombay.

Office of the Private Secretary to the Governor,
Bombay, 27th November 1947.

Copy forwarded with compliments for information to —

(1) The Secretary to Government, Legal Department, with reference to his letter No.10969, dated the 13th November 1947;
(2) The Secretary to Government, Home Department, with reference to his endorsement No.5777/4-B, dated the 20th November 1947.

By order of the Governor of Bombay,

Sd. L.E.Bagshawe,
Private Secretary to the Governor of Bombay.

MBP.
15/5/56.

Bills.

A Bill to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942 and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No.4186.
Bombay Castle, 24th April 1947.

Memorandum from the Home Department No.5777/41D, dated the 17th April 1947.- Transferring for necessary Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof.

RESOLUTION:- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 25th April 1947, as Bill No.XXX of 1947.

2. The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette on the 26th April 1947.

3. The dates of the various publications should be reported to the Secretary to the Bombay Legislative Assembly.

By order of the Governor of Bombay,

Sd. P.M.Lad,
Secretary to Government.

To

The Manager, Government Central Press, Bombay (with the Bill and the Statement of Objects and Reasons and with a request that 230 Gazette copies of the Bill and the S.O.R. may be forwarded to the Secretary to the Bombay Legislative Assembly for distribution to members of the Bombay Legislative Assembly and 25 copies for the use of the Legal Department).

The Home Department,
*The Oriental Translator to Government,
The Secretary to the Bombay Legislative Assembly,
The Director of Publicity, Bombay,
} with a copy of the Bill and the S.O.R.

*With five extra copies of the Bill.

MRP.
15/5/56.

Acts.

Publication of the Bombay Civil Courts (Amendment) Act, 1947.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No.13171.
Bombay Castle, 20th December 1947.

Letter to the Private Secretary to the Governor, No.10969, dated the 18th November 1947.

Letter from the Private Secretary to the Governor, No.P.S.G.5830, dated the 17th December 1947:-

"With reference to the correspondence resting with my endorsement No.PSG., dated the 27th November 1947, I am directed to inform you that intimation has been received from the Secretary to the Government of India, Ministry of Home Affairs, that His Excellency the Governor-General has assented to the Bombay Civil Courts (Amendment) Bill, 1947, on 14th December 1947."

RESOLUTION.- The law should be published as Bombay Act No.XLVIII of 1947 in the Bombay Government Gazette dated the 22nd December 1947.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translation should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Home Department with reference to the Memorandum from that Department No.5777/4-B, dated the 17th April 1947.

By order of the Governor of Bombay,

Sd. G.D.Palekar,
Deputy Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department).

The Home Department,
*The Oriental Translator to Government,
The Bombay Legislature Department,
The Director of Publicity, Bombay,
} With a copy of the Act.

*With five extra copies of the Act.

MRP.
16/5/56.

[To be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. XXX OF 1947.

A Bill to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof.

WHEREAS in view of the provisions of sub-section (4) of section 93 of the Government of India Act, 1935, it is expedient to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions of the said Acts ; It is hereby enacted as follows :—

Geo. 5, Ch. 2. Bom. XI of 1942. Bom. XX of 1942. Bom. X of 1945.

1. This Act may be called the Bombay Civil Courts (Amendment) Act, 1947. Short title.

Bom. XI of 1942. Bom. XX of 1942. Bom. X of 1945.

2. The Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, are hereby repealed. Repeal of Bom. XI of 1942, Bom. XX of 1942 and Bom. X of 1945.

Bom. XI of 1942. Bom. XX of 1942. Bom. X of 1945.

3. Section 2 of the Bombay Civil Courts (Amendment) Act, 1942, and of the Bombay Civil Courts (Second Amendment) Act, 1942, and sections 2 to 8 (both inclusive) of the Bombay Civil Courts (Amendment) Act, 1945, are re-enacted. Re-enactment of certain sections of Bom XI of 1942, Bom. XX of 1942 and Bom. X of 1945.

STATEMENT OF OBJECTS AND REASONS.

Bombay Act No. XI of 1942 enables a District Judge of a neighbouring District, who will be appointed Joint Judge in the absence of a District Judge during the vacation, to dispose of Civil work in either District.

Bombay Act No. XX of 1942 confers upon the Bombay High Court the authority vested in the Provincial Government under section 28 of the Bombay Civil Courts Act, 1869, to invest Civil Judges with Small Cause Court powers.

In the Bombay Civil Courts Act, 1869, it is provided that the Judges of Subordinate Courts should be called "Subordinate Judges". Bombay Act No. X of 1945 modifies the designation and provides that "Subordinate Judges" should be called "Civil Judges".

2. Under sub-section (4) of section 93 of the Government of India Act, 1935, any law made by the Governor during the section 93 regime continues to have effect until two years have elapsed from the date on which the proclamation ceases to have effect unless sooner repealed or re-enacted by Act of the Provincial Legislature. It is considered desirable to continue in force the amendments made by Bombay Acts Nos. XI and XX of 1942 and X of 1945 in the Bombay Civil Courts Act, 1869. The Bill seeks to re-enact the amendments made by the said Acts.

Dated 15th April 1947.

(Signed) MORARJI DESAI.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

Bombay, dated 24th April 1947.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

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BOMBAY ACT NO. XLVIII OF 1947

~~An Act~~ ~~L. A. BILL No. XXX OF 1947.~~

~~A Bill~~ *to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof.*

~~(As read for the third time and passed by the Legislative Assembly on the 10th September 1947.)~~

~~(As read for the third time and passed by the Legislative Council on the 17th October 1947.)~~

26 Geo. 5, Ch. 2. Bom. XI of 1942. Bom. XX of 1942. Bom. X of 1945.

WHEREAS in view of the provisions of sub-section (4) of section 93 of the Government of India Act, 1935, it is expedient to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions of the said Acts; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bombay Civil Courts (Amendment) Act, 1947.

Bom. XI of 1942. Bom. XX of 1942. Bom. X of 1945.

Repeal of Bom. XI of 1942, Bom. XX of 1942 and Bom. X of 1945.

2. The Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, are hereby repealed.

Bom. XI of 1942. Bom. XX of 1942. Bom. X of 1945.

Re-enactment of certain sections of Bom. XI of 1942, Bom. XX of 1942 and Bom. X of 1945.

3. Section 2 of the Bombay Civil Courts (Amendment) Act, 1942, and of the Bombay Civil Courts (Second Amendment) Act, 1942, and sections 2 to 8 (both inclusive) of the Bombay Civil Courts (Amendment) Act, 1945, are re-enacted.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XXX OF 1947]

(As read for the third time and passed by the Legislative Assembly on the 10th September 1947.)

(As read for the third time and passed by the Legislative Council on the 17th October 1947.)

A Bill to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof.

[Mr. Morarji Desai, M.L.A.]

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XXX OF 1947.

A Bill to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof.

(As read for the third time and passed by the Legislative Assembly on the 10th September 1947.)

26 Geo. 5, Ch. 2. Bom. XI of 1942. Bom. XX of 1942. Bom. X of 1945.

WHEREAS in view of the provisions of sub-section (4) of section 93 of the Government of India Act, 1935, it is expedient to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions of the said Acts; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Civil Courts (Amendment) Act, 1947.

Bom. XI of 1942. Bom. XX of 1942. Bom. X of 1945.

Repeal of Bom. XI of 1942, Bom. XX of 1942 and Bom. X of 1945.

2. The Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, are hereby repealed.

Bom. XI of 1942. Bom. XX of 1942. Bom. X of 1945.

Re-enactment of certain sections of Bom. XI of 1942, Bom. XX of 1942 and Bom. X of 1945.

3. Section 2 of the Bombay Civil Courts (Amendment) Act, 1942, and of the Bombay Civil Courts (Second Amendment) Act, 1942, and sections 2 to 8 (both inclusive) of the Bombay Civil Courts (Amendment) Act, 1945, are re-enacted.

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STATEMENT OF OBJECTS AND REASONS.

Bombay Act No. XI of 1942 enables a District Judge of a neighbouring District, who will be appointed Joint Judge in the absence of a District Judge during the vacation, to dispose of Civil work in either District.

Bombay Act No. XX of 1942 confers upon the Bombay High Court the authority vested in the Provincial Government under section 28 of the Bombay Civil Courts Act, 1869, to invest Civil Judges with Small Cause Court powers.

In the Bombay Civil Courts Act, 1869, it is provided that the Judges of Subordinate Courts should be called "Subordinate Judges". Bombay Act No. X of 1945 modifies the designation and provides that "Subordinate Judges" should be called "Civil Judges".

Under sub-section (4) of section 93 of the Government of India Act, 1935, any law made by the Governor during the section 93 regime continues to have effect until two years have elapsed from the date on which the proclamation ceases to have effect unless sooner repealed or re-enacted by Act of the Provincial Legislature. It is considered desirable to continue in force the amendments made by Bombay Acts Nos. XI and XX of 1942 and X of 1945 in the Bombay Civil Courts Act, 1869. The Bill seeks to re-enact the amendments made by the said Acts.

Dated 15th April 1947.

MORARJI DESAI.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XXX OF 194.]

(As read for the third time and passed by the Legislative Assembly on the 10th September 1947.)

A Bill to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof.

[Mr. MORARJI DESAI, M.L.A.]

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OMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XXX OF 1947 (A BILL TO REPEAL THE BOMBAY CIVIL COURTS (AMENDMENT) ACT, 1942, THE BOMBAY CIVIL COURTS (SECOND AMENDMENT) ACT, 1942, AND THE BOMBAY CIVIL COURTS (AMENDMENT) ACT, 1945, AND TO RE-ENACT CERTAIN PROVISIONS THEREOF).

Mr. MORARJI R. DESAI : Sir, I beg to introduce L. A. Bill No. XXX of 1947 [A Bill to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof].*

The Hon. the SPEAKER : The Bill is introduced.

Mr. MORARJI R. DESAI : I beg to move that L. A. Bill No. XXX of 1947 be read a first time.

Question proposed.

Mr. MORARJI R. DESAI : Sir, as will be seen from the provisions of the Bill, it is meant to repeal three amending Acts, two of which were passed in the year 1942 and the third in 1945, and to re-enact certain provisions thereof. The three amending Acts, namely, Bombay Act XI of 1942, Bombay Act XX of 1942 and Bombay Act X of 1945, were enacted in order to remove certain flaws in the amended enactments. By Bombay Act XI of 1942, a District Judge can be empowered to look after urgent civil work in a neighbouring district also, in the absence of the District Judge of that district during vacation. Before the enactment of this amending Act, there was no provision in the Act to provide for the disposal of urgent civil work in the absence of a District Judge during vacation, though there was provision for entrusting urgent criminal work during such absence of a District Judge either to an Assistant Judge of the district, if any, or to the Sessions Judge of the adjacent District, by empowering either the former or the latter officer to look after urgent criminal work. The Judge so empowered would look after urgent criminal work sitting at his headquarter place. As there was no analogous provision for the disposal of urgent civil work during the absence of a District Judge in the vacation, Bombay Act XI of 1942 was enacted to enable the appointment of a District Judge as a Joint Judge to look after urgent civil work in a neighbouring district during the absence of the District Judge of the place in the vacation.

Section 28 of the Bombay Civil Courts Act, 1869, empowered only the Provincial Government to invest Subordinate Judges (who are now called Civil Judges) with Small Cause Court powers. But the investment of such powers by Government was always done on the recommendation of the High Court. That is to say, Government used to exercise the power only on the recommendation of the High Court. In 1942, therefore, section 28 of the Bombay Civil Courts Act, 1869, was amended and the High Court was empowered to invest Civil Judges with Small Cause Court powers.

The third amending Act of 1945 was enacted only to change the designation of "Subordinate Judges" into "Civil Judges", and, therefore, there is very little to be said in explanation of that. The term "Civil Judge" was considered better than the term "Subordinate Judge".

This, in short, Sir, explains the provisions of the three amending Acts, which are, under the provisions of the present Bill, sought to be repealed and re-enacted.

Question put, and agreed to.

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*Published in the *Bombay Government Gazette*, Part V, dated 25th April 1947.

Mr. MORARJI R. DESAI : Sir, I beg to move that L. A. Bill No. XXX of 1947 [A Bill to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof] be read a second time.

Question put, and agreed to.

The Hon. the SPEAKER : Since there are no amendments to this Bill, I shall put all the clauses, clauses 1 to 3, and the Preamble together to the House.

Clauses 1 to 3 and the Preamble ordered to stand part of the Bill.

Mr. MORARJI R. DESAI : Sir, I beg to move that L. A. Bill No. XXX of 1947 [A Bill to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof] be read a third time and passed.

Question put, and agreed to.

The Hon. the SPEAKER : L. A. Bill No. XXX of 1947 [A Bill to repeal the Bombay Civil Courts (Amendment) Act, 1942, the Bombay Civil Courts (Second Amendment) Act, 1942, and the Bombay Civil Courts (Amendment) Act, 1945, and to re-enact certain provisions thereof] is read a third time and passed.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.